

Municipal Water Law

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HELPING TO ENSURE SAFE AND RELIABLE DRINKING WATER

Mission

**To protect the health
of the people of
Washington State
by assuring safe
and reliable
drinking water.**



Today's Presentation

Municipal Water Law Overview

**Duty to Serve
Retail Service Area
Local Government Consistency**

Water Right Place of Use/Service Area

Municipal Water Law (MWL) Overview

**“An Act Relating to certainty and
flexibility of municipal water rights
and efficient use of water ...”**

**SESSHB 1338 (MWL)
2003 Legislative Session**

Municipal Water Law Overview

- 💧 “Certainty and flexibility” on water rights
- 💧 Focus on responsible stewardship
- 💧 DOH to adopt *Water Use Efficiency* rules

Municipal Water Law Overview

Stronger ties between ...

DOH Approvals ↔ Water Rights

Water System Planning ↔ Land Use and Watershed Planning

Municipal Water Law Overview

Defined

- *municipal water supplier*
- *municipal water supply purposes*

MWL applies to municipal water suppliers (MWS)

Municipal Water Law Overview

- ◆ Many unperfected certificates became water rights in “good standing”
- ◆ Connection/population limits found on a water right are often no longer a limiting factor if DOH has approved a number of connections or a water system plan

Municipal Water Law Overview

💧 Water Use Efficiency (Legislative Direction)

- DOH must develop rules
- Moves from voluntary participation to regulatory program
- Rule currently in development

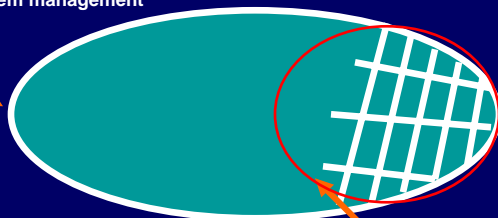
Municipal Water Law Overview

💧 Place of use may expand to service area

- Identified in an approved water system plan or small water system management program

Water Right Place of Use Service Area

Water Right Place of Use/Service Area
(from approved water system plan or
small water system management
program)

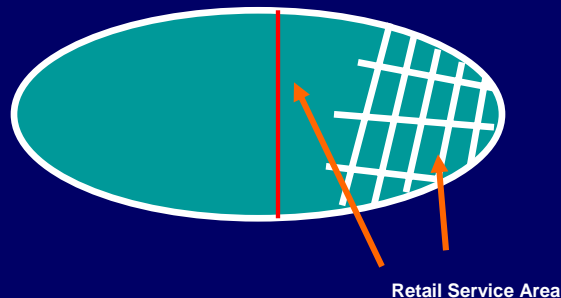


Original Place of Use (from Water
Right)

Municipal Water Law Overview

- 💧 Municipal Water Suppliers now have a **duty to serve** new connections within their **retail service area**
- 💧 **Duty to Serve** requirement applies unless (on a case-by-case basis) the municipal water supplier cannot meet four threshold factors

Retail Service Area (Duty to Serve)



Municipal Water Law Overview

- 💧 Retail service area (as delineated within a water system plan) must be consistent with land use plans and development regulations
- 💧 DOH has the responsibility of ensuring this consistency

Overview Summary

💧 The Municipal Water Law

- provided certainty and flexibility of water rights for many MWS
- required DOH to adopt water use efficiency rules
- created stronger ties between DOH approvals, water rights, local adopted plans and regulations
- allows for expansion of a MWS water right place of use to the service area identified in a water system plan or small water system management program
- created the duty to serve within a MWS retail service area

Duty to Serve Basics

Duty to Serve Basics

- ◆ **Municipal Water Suppliers now have a *duty to serve* new connections within their *retail service area***
- ◆ ***Duty to serve* requirement applies unless (on a case-by-case basis) the municipal water supplier cannot meet four threshold factors**

Duty to Serve Basics

- ◆ **Retail service area (as delineated within a water system plan) must be consistent with land use plans and development regulations**
- ◆ **DOH has the responsibility of ensuring this consistency**

Duty To Serve DOH Policy Approach Proposal

Duty To Serve – DOH Proposal

💧 Retail Service Area

- **Documented in water system plans (upon approval)**
- **Location determined by the MWS**
 - **Within the Initial, updated or amended water system plan**
- **Must include existing services and may include planned services**

Duty To Serve – DOH Proposal

💧 Duty to Serve

- MWS has a *duty to serve* within the retail service area
- MWS cannot provide retail service outside the retail service area

Duty To Serve – DOH Proposal

💧 Duty to Serve

- Retail service areas can be modified by amending the MWS' water system plan
- Retail service area modifications to exclude a portion of the retail service area where a request for service is pending will not be approved by DOH

Duty To Serve – DOH Proposal

◆ Threshold factors (paraphrased)

- Service can be available in a “timely and reasonable manner”
- Sufficient water rights
- Sufficient capacity to serve in a “safe and reliable manner”
- Consistent with comprehensive plans and development regulations

Duty to Serve – DOH Proposal

Threshold factor oversight

Capacity
Consistency



DOH

Water Rights



Ecology

Timely and Reasonable



Relationship between the
applicant and the MWS

Duty To Serve – DOH Proposal

Capacity

■ Oversight (DOH)

- “the municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner **as determined by the department of health**”

Duty To Serve – DOH Proposal

Capacity

■ Method

- Incorporated in each water system plan is an analysis of a MWS’s “water system capacity.” The MWS’s capacity is based on the physical capacity (source and storage) limits and water right (Qi/Qa) limitations
- Capacity is generally expressed in an approved number of connections
- **Safe and reliable manner** means that a MWS cannot have a red operating permit

Duty To Serve – DOH Proposal

💧 Consistency

▪ Oversight (DOH)

- “In approving the water system plan of a public water system, **the department shall ensure** that water service to be provided by the system under the plan for any new industrial, commercial, or residential use is consistent...”

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- Applies within a MWS retail service area to adopted comprehensive plans, land use plans and development regulations

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- DOH will look to local governments to provide consistency feedback on water system plans, updates, and applicable amendments
- Required elements include: land use, growth projections (6-year), provisions of water service, water use from potential large users, and service extension ordinances

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- Local government consistency review should be conducted prior to water system plan submittal
- DOH staff will assist the MWS make the appropriate contacts at the local government

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- MWS should provide local government 60-day period in which to review the water system plan
- Inconsistencies/disputes between MWS and local government should be resolved prior to water system plan submittal to DOH

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- Local governments should provide document of inconsistencies to DOH
- DOH will make the final consistency determination
- Inconsistencies with the required elements must be resolved before DOH proceeds with the approval process

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- In the event of limited review (or lack of review) by local government:
 - the MWS must document efforts to obtain local government input and to provide an evaluation of the consistency elements
 - DOH will conduct follow-up contact with the appropriate local government

Duty To Serve – DOH Proposal

💧 Consistency

▪ Method

- Public health
 - DOH may approve a water system plan with inconsistencies where significant and immediate public health threats exist
 - DOH will require MWS to address these issues following plan approval

Duty To Serve – DOH Proposal

💧 Water Rights

▪ Oversight (Ecology)

- The Department of Ecology has regulatory authority over water resources in the State of Washington

Duty To Serve – DOH Proposal

💧 Water Rights

▪ Method

- DOH processes ensure that all water system plans are provided to Ecology for review
- Ecology takes compliance actions as its deems appropriate
- DOH will support Ecology compliance actions (at the point of WSP approval as well as within the 6-year planning cycle)

Duty To Serve – DOH Proposal

💧 Timely and Reasonable

- Oversight (civil matter)
 - *Timely and reasonable* considerations are very situation specific (between the MWS and applicant)

Duty To Serve – DOH Proposal

💧 Timely and Reasonable

- Method
 - DOH is finalizing *timely and reasonable* guidance
 - In some cases the local government authority may provide timely and reasonable oversight

Duty to Serve Summary

- ◆ MWS have a duty to serve within their retail service area (unless on a case-by-case basis, the threshold factors cannot be met)
- ◆ Retail service area will be documented in approved water system plan
- ◆ Focus is on land use, growth projections (6-year), provisions of water service, water use from potential large users, and service extension ordinances

Duty to Serve Steps to Finalize Policy

- ◆ July-August Outreach (informal process)
 - Written/oral comments, follow-up meetings as requested
 - WSAC
 - WUCC
 - Environmental Community
 - Local Governments
 - Business
 - Comments due by August 26
- ◆ Update direction
- ◆ October Outreach (informal process)
 - Broad outreach
- ◆ Rule development to follow (with formal rule-making processes)



Duty to Serve

Questions- Comments

Place of Use/Service Area

- ◆ **Element of Ecology Statute**
- ◆ **Allows for place of use to expand to service area within approved water system plan or small water system management program if certain elements are in place**

Place of Use/Service Area

- 💧 Working collaboratively with Ecology to address this section
- 💧 DOH has put forth some suggestions on methods to address the issues within this section and identified some ways in which DOH could support Ecology's efforts.

Place of Use/Service Area

- 💧 What is the definition of "service area"?
 - DOH suggestion...
 - Defined by the MWS in the water system plan or small water system management program
 - May include wholesale customers (i.e. other water systems)

Place of Use/Service Area

💧 What are the factors that must be in place in order for the place of use to expand to a MWS's service area?

- Three elements
 - “in compliance with the terms of the water system plan or small water system management program...”
 - Not inconsistent with adopted comprehensive plans, land use plans or development regulations
 - Not inconsistent with adopted watershed plans (Chapter 90.82 and 90.54.040(1) RCW)

Place of Use/Service Area

💧 “in compliance with the terms of the water system plan or small water system management program...”

- DOH suggestion...
 - DOH will determine compliance with specific elements at point of document (water system plan or small water system management program) approval

Place of Use/Service Area

- ◆ “in compliance with the terms of the water system plan or small water system management program...”

- **DOH suggestion (continued)**

- Determination would include:
 - Plan approval date
 - Water use efficiency requirements
 - Evaluation of reclaimed water (if > 1000 connections)
 - Identification of service area
 - Completed water right assessment

Place of Use/Service Area

- ◆ **Not inconsistent with adopted comprehensive plans, land use plans or development regulations**

- **DOH suggestion...**

- If the MWS desires the place of use benefit, the MWS must include an evaluation and determination of “not inconsistent” within the water system plan or small water system management program
- Determination must cover entire “service area”

Place of Use/Service Area

◆ Not inconsistent with adopted watershed plans

■ DOH suggestion...

- Ecology will make this determination during its review of the water system plan or small water system management program
- If no determination is made by Ecology, then a the plan will be considered “not inconsistent”

Place of Use/Service Area

◆ What are the effects of a MWS failing to meet the compliance or consistency requirements found in this section of the MWL?

■ DOH suggestion...

- Ecology will notify the MWS that it does not qualify for an expanded place of use under this section of the MWL

Place of Use/Service Area

Questions- Comments

For more information:

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